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June 17, 2021

VIA ELECTRONIC FILING
The Honorable Jocelyn G. Boyd
Chief Clerk/Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia SC 29210

Re: Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Establishment of Solar Choice Metering Tariffs Pursuant to S.C. Code Ann. Section 58-40-20
Docket Nos. 2020-264-E and 2020-265-E

Dear Ms. Boyd:

On June 9, 2021, the South Carolina Office of Regulatory Staff ("ORS") filed its Petition for Rehearing and/or Reconsideration requesting the Public Service Commission of South Carolina (the "Commission") hold a limited rehearing and/or reconsider its position regarding ORS's recommendation that Duke Energy Progress, LLC and Duke Energy Carolinas, LLC (the "Companies") be required to track and file annual reports on the cost shift based on the avoided cost for solar customer-generators subscribing to the Interim Riders and the Solar Choice Metering Tariffs.

Please find enclosed for filing the Companies' Response in Opposition to Petition for Rehearing and/or Reconsideration. The Companies' Response shows the Commission that 1) ORS's Petition does not identify any error or alleged error by the Commission; 2) ORS's Petition fails to cite any authority to support ORS's request; 3) ORS's characterization that the request was "unopposed" does not support rehearing or reconsideration; 4) ORS's request is untimely given that it was not properly raised in surrebuttal or a timely motion; 5) ORS's request is improper because the Solar Choice Tariffs eliminate the cost shift in accordance with Act 62 and if any cost shift remains, that information would be provided in the Companies' rate proceedings; and 6) ORS's request to obtain information about "associated incentives" through such annual reporting is improper and outside the scope of this proceeding.

By copy of this letter, I am serving all parties of record via electronic mail.

Sincerely,

Heather Shirley Smith

Heather Shirley Smith

Enclosure

cc: Parties of record

BEFORE THE

PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2020-264-E
DOCKET NO. 2020-265-E

In the Matter of: Duke Energy Carolinas, LLC's Establishment of Solar Choice Metering Tariffs Pursuant to S.C. Code Ann. Section 58-40-20 Duke Energy Progress, LLC's Establishment of Solar Choice Metering Tariffs Pursuant to S.C. Code Ann. Section 58-40-20	)	**RESPONSE IN OPPOSITION TO PETITION FOR REHEARING AND/OR RECONSIDERATION**

Pursuant to S.C. Code Ann. Regs. 103-826, Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP" and together with DEC, the "Companies") submit this response in opposition to the Petition for Rehearing and/or Reconsideration (the "Petition") filed in these dockets by the South Carolina Office of Regulatory Staff (the "ORS") on June 9, 2021. The Petition requests that the Public Service Commission of South Carolina (the "Commission") hold a rehearing and/or reconsider certain findings and conclusions in Commission Order No. 2021-390, issued in these dockets on May 30, 2021 (the "Order"). Specifically, the Petition requests that the Commission require the Companies to "track and file annual reports on the cost shift based on the avoided cost for solar customer-generators subscribing to the Interim Riders and the Solar Choice Metering Tariffs" approved by the Commission. (Petition, p. 1.) For the reasons set forth below, the Companies respectfully request that the Commission deny the Petition.

STANDARD OF REVIEW

The Commission's review of the Petition is governed by S.C. Code Ann. Reg. 103-825(4), which requires the Petition to:

> [s]et forth clearly and concisely:
> (a) The factual and legal issues forming the basis for the petition;
> (b) The alleged error or errors in the Commission order;
> (c) The statutory provision or other authority upon which the petition is based.

The Commission has held that "[c]onclusory statements and general and non-specific allegations of error do not satisfy the requirements of the rule." (*Friends of the Earth and Sierra Club*, Docket No. 2017-207-E, Order No. 2019-122, at page 3.) Thus, the burden which the Petition must satisfy is high and must rest upon "error" based in statutory provision or other authority—the Petition does not meet this burden.

ARGUMENT

I. The Petition does not identify any error or alleged error by the Commission.

As outlined above, S.C. Code Ann. Reg. 103-825(4) contains the threshold requirements with which the Petition must comply—including the requirement that the Petition "clearly and concisely" identify the "alleged error or errors" in the Order. However, the Petition does not cite any specific error within the Order. In fact, the Petition does not cite any language from the Order. Rather, the sole basis for the Petition is that the "Commission did not explicitly rule on the ORS's recommendation" that the Companies track and report cost shift. (Petition, p. 1.) The Commission made no error in electing not to grant the ORS's request, and there is therefore nothing for it to correct on rehearing. Because the Commission found that the Solar Choice Tariffs "significantly, if not completely, eliminate the cost shift," there is nothing to track and report as contemplated by the ORS. (Order No. 2021-390 at 77.) Given the Commission's decision not to affirmatively address the issue in the Order, and the Order's findings that the Solar Choice Tariffs eliminate the cost shift, it can be reasonably inferred that the Commission denied the ORS's request and that there are no errors in need of correction on rehearing.

II. The Petition fails to cite any authority to support the ORS's request.

The Petition fails to clear another threshold within S.C. Code Ann. Reg. 103-825(4) because it does not cite any "statutory provision or authority" that would support its request that the Companies track and annually report on the cost shift. Act 62 requires that the Solar Choice Tariffs be designed to balance the elimination of cost-shifts with the goal of ensuring access to customer-generator options. Specifically, Act 62 requires that, "**<u>in establishing a successor solar choice metering tariff</u>**, the commission is directed to: (1) eliminate any cost shift to the greatest extent practicable on customers who do not have customer-sited generation while also ensuring access to customer-generator options for customers who choose to enroll in customer-generator programs . . . ." (S.C. Code Ann. § 58-40-20(G) (emphasis added).)

The ORS asserts that ongoing reporting is necessary "[i]n order to comply with Act 62's requirements to eliminate any cost shift or subsidization to the greatest extent practicable" and the ORS ties this erroneously narrow view of Act 62 with its "reserv[ing] the right to review and make recommendations on all cost shift impacts in any future general rate case proceeding." (Petition, p. 2; ORS Witness Lawyer Surrebuttal Testimony, p. 7; ORS Post-Hearing Brief, p. 19.) This does not square with Act 62. The plain language of Act 62 requires that the Commission give consideration to cost shifts "in *establishing* a successor solar choice metering tariff"; it does not support any ongoing reporting or *post hoc* adjustments the ORS believes may be appropriate in a future rate case. The Commission's interpretation of this plain statutory language appears to be consistent with the Companies':

- "[T]he **<u>Solar Choice Tariffs have eliminated cost shift</u>** to the greatest extent practicable via innovative rate structures that reflect best practices from across the country." (Order No. 2021-390 at 21 (emphasis added).)

- "Therefore, by providing a glide path for existing customers and ensuring access to NEM programs, **while eliminating cost shift 'to the greatest extent practicable,' the Commission is convinced that the Solar Choice Tariffs satisfy the requirements of Act 62** in a way that represents an appropriate balancing of the various interests therein." (*Id.* at 22 (emphasis added).)

- "These specific, enumerated requirements direct the Commission to develop a methodology to compensate customer-generators for the benefits provided by their exports and **select a solar choice tariff that eliminates any cost shift 'to the greatest extent practicable...** while also ensuring access to customer-generator options.'" (*Id.* at 23 (emphasis added).)

- "The Companies presented sound analysis evidencing that **the Solar Choice Tariffs eliminate to the greatest extent practicable cost shifts** that can occur under the Existing NEM Programs for DEC and DEP." (*Id.* at 45 (emphasis added).)

The Commission has thus given ample consideration to cost shifts in its review and approval of the Solar Choice Tariffs, and the ORS's request for ongoing reporting so that it can make recommendations about adjustments in a future rate case is not supported by Act 62.

While the General Assembly did set out specific tracking and reporting requirements in Act 62, annual reporting on any cost shift is not included in these requirements or anywhere else within Act 62. Specifically, S.C. Code Ann. § 58-40-20(E) requires that the "value of energy produced by customer-generators must be updated annually and the methodology revisited every five years." Clearly, the General Assembly contemplated that updates to the value of energy would be filed with the Commission and specifically included two such update mechanisms within Act 62. Yet, the General Assembly did not include any similar language related to the cost shift. (*See Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 554–55, 320 S.E.2d 458, 463 (Ct. App. 1984) ("A well-established rule of statutory construction is '*expressio unius est exclusio alterius*,' which means that the enumeration of particular things excludes the idea of something else not mentioned.").) Furthermore, S.C. Act No. 236 of 2014 ("Act 236") contains specific reporting requirements related to cost shift arising from distributed energy resources.[1] If the General Assembly had intended the Companies to track and report on the cost shift—as requested by the ORS—surely the General Assembly would have included such a requirement within Act 62, just as it did with Act 236. However, no such requirement exists. As such, the Petition does not and cannot cite any "statutory provision or other authority" upon which to base its claim that the Commission committed error in not ruling on its request. Therefore, the Petition does not meet this threshold requirement applicable of S.C. Code Ann. Reg. 103-825(4).

III. The Petition's characterization that the request was "unopposed" does not support rehearing or reconsideration.

The ORS's assertion that this request was "unopposed" cannot constitute a basis for the Commission to rehear or reconsider this issue. (Petition, p. 2.) Just as the Commission is not required to expressly address each and every request made in the record, neither are the parties of record—however, the lack of express denial by the Commission or other parties simply cannot mean that such request is presumptively adopted. Clearly, the Companies and other parties discussed the cost shift and reporting requirements at length and nowhere did any other party express agreement with the ORS on this issue.[2] In fact, the record contains robust analyses proving that the cost shift is substantially, if not completely, eliminated—obviating the need for any such reports. (*See, e.g.*, Tr. Vol. 1, p. 32.5; Tr. Vol. 1, p. 84.23; Tr. Vol. 2, p. 270.11.) The Petition would have the Commission believe that, because no party specifically and expressly rejected this idea, the parties came to a meeting of the minds on this point. This is not the case. The ORS's

[1] For example, S.C. Code Ann. § 58-27-1050 required a report to the Commission in December of 2015 that included "a general overview of cost shifting" arising from utilization of distributed energy resources. Act 236 required no such report after 2015.

[2] The Companies note that the ORS did not question any other witnesses regarding the reporting requirement and provided no opportunity for the witnesses to develop a record during the hearing and express such disagreement. Despite this, the ORS now points to such request as the sole basis for the Commission to rehear or reconsider the Order.

recommendation that ongoing reporting on any cost shift be required was mentioned for the first time in its surrebuttal testimony, and the ORS did not question any witnesses regarding the reporting requirement. For that reason, the Companies had no opportunity to express disagreement in the record. Nevertheless, the Companies take this opportunity to formally oppose the recommendation. Because the Solar Choice Tariffs "significantly, if not completely, eliminate the cost shift," ongoing reporting of any cost shift would be neither necessary nor helpful. (Order, p. 77.)

IV. The request is untimely.

As discussed above, the ORS's request that the Companies track and report the cost shift was only made in surrebuttal testimony. However, reply (i.e., surrebuttal) testimony must be limited to matters already raised within the testimony of other parties. (*See State v. Watson*, 353 S.C. 620, 623-24, 579 S.E.2d 148, 150 (Ct. App. 2003) ("Surrebuttal is appropriate when, in the judge's discretion, new matter or new facts are injected for the first time in rebuttal"); *U.S. v. Barnette*, 211 F.3d 803, 821 (4th Cir. 2000) ("Surrebuttal evidence is admissible to respond to any *new matter* brought up on rebuttal.") (emphasis added); *State v. Farrow*, 332 S.C. 190, 194 (S.C. App., 1998) ("We thus hold the reply testimony . . . was improper because it was not presented to rebut evidence adduced by Farrow.") (citing *Daniel v. Tower Trucking Co.*, 205 S.C. 333, 32 S.E.2d 5 (1944)).) To be clear, the ORS was the only party providing testimony that even contemplated a tracking and reporting requirement. As such, it cannot be said that the surrebuttal testimony was responsive to any matter already raised by a party. Likewise, if the ORS desired to make a motion related to the tracking and reporting requirement—which it did not—the Commission's rules and regulations required such a motion to be made no later than 10 days prior to hearing, which the ORS failed to do. (S.C. Code Ann. Reg. 103-829.) Given that the tracking and reporting request was improperly made during surrebuttal and not made in a timely motion, it cannot now be grounds to rehear or reconsider the Order—such a result would be illogical and contrary to well-settled principles of practice before the Commission.

V. Even if the Petition met the threshold requirements within the Commission's rules and regulations—which it does not—the request is improper because the Solar Choice Tariffs eliminate the cost shift in accordance with Act 62.

The Companies, the parties to the Stipulations submitted in this proceeding, and even the Commission have explained that the Solar Choice Tariffs "significantly, if not completely eliminate the cost shift" in compliance with Act 62. (Order, p. 28.) As such, it is unclear what the reports requested by the ORS would even entail. Even assuming that there would even be cost shift to report, the Petition fails to consider the ratemaking process. For example, even if the Companies reported some level of cost shift each year to the Commission, and the Commission desired to further eliminate such cost shift, all such adjustments would have to be made within the Companies' base rate cases. Furthermore, the nature of ratemaking in those base rate proceedings means that the Companies must examine rate impacts to all customers, which would necessarily include an analysis of the cost shift that remains, if any. To implement the Petition's request would add an unnecessary administrative burden—with minimal benefit, if any—upon the Companies and the Commission given that the Commission would obtain information about any remaining cost shift via the base ratemaking proceedings. Given the link to the Companies' base rate cases, it seems that the ORS's request is more appropriate for discovery in a base rate proceeding rather than in this proceeding, which deals with the design of the Solar Choice Tariffs.

VI. The Petition's request to obtain information about "associated incentives" through such annual reporting is improper and outside the scope of this proceeding.

If the Commission orders any reporting—and for the reasons cited herein, the Companies believe that would be improper from both a procedural standpoint and statutory standpoint—that reporting should be limited to the effect of the Solar Choice tariffs. Presumably, the "associated incentives" cited in the Petition refer to the Companies' energy efficiency incentive that would be made available to customers (the "EE Customer Incentive") as proposed in Docket Nos. 2021-144-E and 2021-143-E. At the outset, the EE Customer Incentive is outside the scope of the Solar Choice proceeding. Therefore, ordering any reporting requirement related to the EE Customer Incentive in this proceeding would be improper. Additionally, the Petition is the first and only place during the entirety of the now-concluded Solar Choice proceeding in which the ORS mentioned any tracking any reporting requirement related to the EE Customer Incentive, if that is indeed what the ORS intends. As such, the issue is improper for the Commission's consideration given that it does not appear anywhere within the record in this proceeding. Even if the EE Customer Incentive was within the scope of this proceeding and the ORS had mentioned such request prior to the Petition, the request would simply be unnecessary given the robust reporting requirements already in place related to the Companies' annual EE rider proceedings. Any reporting for EE incentives belong within the context of EE dockets and are comprehensively evaluated by the ORS and other parties in the existing annual EE rider proceedings. Therefore, the request to track the impacts of the EE Customer Incentive is untimely, beyond the statutory scope of this proceeding, improper, and unnecessary.

CONCLUSION

In short, any petition for rehearing and/or reconsideration must meet a high burden in order to be granted by the Commission. The Petition does not meet that burden. The Petition fails to meet even the threshold requirements of the Commission's rules and regulations because it fails to cite any error by this Commission or any recognized authority that would support its request and utilizes curious logic to characterize this request as "unopposed" within the record. Furthermore, the request is untimely given that it was not properly raised in surrebuttal or a timely motion. Even if the Petition did meet the requirements of the Commission, the request to track and report on cost shift is improper given that the cost shift under the Solar Choice Tariffs has been eliminated "to the greatest extent practicable." To the extent any cost shift remains, that information would be provided to the Commission in the Companies' rate proceedings. Finally, any request related to the EE Incentive is outside the scope of this proceeding, outside of Act 62's articulation for Solar Choice tariffs, and particularly inappropriate in this case given that the ORS did not request any reporting related to the EE Incentive until it filed the Petition. For the aforementioned reasons, the Companies respectfully request that the Commission to deny the Petition.

Respectfully submitted this 17th day of June, 2021.

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BEFORE THE
PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2020-264-E
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In the Matter of: Duke Energy Carolinas, LLC's Establishment of Solar Choice Metering Tariffs Pursuant to S.C. Code Ann. Section 58-40-20 Duke Energy Progress, LLC's Establishment of Solar Choice Metering Tariffs Pursuant to S.C. Code Ann. Section 58-40-20	)))))))))))	**CERTIFICATE OF SERVICE**

The undersigned, Lyndsay McNeely, Paralegal for Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, does hereby certify that she has served the persons listed below with a copy of the Response in Opposition to Petition for Rehearing and/or Reconsideration via electronic mail at the addresses listed below on June 17, 2021.

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Dated this 17th day of June, 2021.

Lyndsay McNeely

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